

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BERKELEY BOWL PRODUCE, INC.
Employer

and

Case 32-RC-103811

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 5
Petitioner

ORDER

The Petitioner's request for special permission to appeal the Regional Director's *Lufkin*¹ language in the Stipulation to Set Aside Election and his decision to hold the rerun election on the Employer's premises is granted. Based on the evidence before us, the appeal is denied on the merits.²

Dated, Washington, D.C., October 15, 2014.

MARK GASTON PEARCE, CHAIRMAN

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

¹ See *Lufkin Rule Co.*, 147 NLRB 341 (1964).

² The Union challenged the language in the *Lufkin* notice, set forth in the Stipulation to Set Aside Election, because it included the statement that "[t]he Employer does not admit that it has violated the National Labor Relations Act." While we are concerned with the Regional Director's inclusion of this language, we note that he deleted the sentence from the *Lufkin* notice in the Revised Stipulation to Set Aside Election that issued on September 26, 2014. As to the Union's argument that the *Lufkin* language in the Revised Stipulation inaccurately indicated that the first election was set aside by agreement of the parties, the *Lufkin* language on the Second Revised Notice to Voters does not include that statement.

While the Regional Director's treatment of the available facts and arguments regarding the election location and his application of our decision in *2 Sisters Food Group*, 357 NLRB No. 168 (2011), was markedly brief, the Petitioner has not demonstrated to us that the Regional Director abused his discretion by deciding to hold the rerun election on the Employer's premises.